

ZONING BOARD OF APPEALS
MEETING MINUTES
September 11, 2012
4:00 P.M.

CALL TO ORDER: Mr. John Stetler, Chairperson called meeting to order at 4:00 P.M.

ATTENDANCE:

Members Present: Rick Barnes James Moreno
 Deland Davis John Stetler
 Greg Dunn

Members Excused: Carlyle Sims and Becky Squires

Staff Present: Jill Steele, Deputy City Attorney
 Marcel Stoetzel, City Attorney's Ofc.
 Glenn Perian, Senior Planner
 Leona Parrish, Admin. Assistant, Planning Dept.

ADDITIONS OR DELETIONS TO THE AGENDA:

- Note that under New Business the Petition #Z-04-12 has been removed from the agenda.

CORRESPONDANCE: (Handed out at today's meeting.)

- Letters (4) received in opposition regarding appeal #Z-05-12.

OLD BUSINESS:

Mr. Glenn Perian, Senior Planner stated at last month's meeting appeal #Z-03-12 was adjourned and the applicant is asking for additional time.

MOTION: MR. DELAND DAVIS MADE A MOTION TO ADJOURN APPEAL #Z-03-12 PER THE PETITIONERS REQUEST IN ORDER TO ALLOW THEM TO SEEK LEGAL ASSISTANCE REGARDING THEIR REQUEST FOR A VARIANCE TO ALLOW TWO RESIDENTIAL STRUCTURES ON ONE PARCEL; SUPPORTED BY MR. JAMES MORENO.

MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN; ALL IN FAVOR; NONE OPPOSED, MOTION APPROVED.

Mr. John Stetler, Chairperson stated the meeting procedures and that everyone present may speak either for or against an appeal. He stated he will ask for a staff report to be read and then open the public hearing. At the public hearing persons may come forward and state their name and address for the record as it is being recorded and then speak either for or against an appeal. The public hearing will then be closed and the zoning board will discuss and make a decision and if denied they may appeal to the Circuit Court.

NEW BUSINESS:

- A) **Appeal #Z-04-12: (424 Webber St.)** Petition from Thomas Paugh, 424 Webber St., Battle Creek, MI 49015, has been removed from today's agenda.
- B) **Appeal #Z-05-12: (185 Yale Street.)** Petition from Catherine Case, 185 Yale Street, Battle Creek, MI 49017-5470. Request is for a variance to allow an 11 ft. x 11 ft. Gazebo to be 15 ft. from a front-yard property line. Parcel is zoned "R-1C Single Family Residential District", the permit application is requested pursuant to Planning and Zoning Code, Chapter 1286.05 (b).

Mr. Glenn Perian, Senior Planner stated Appeal #Z-5-12 is a petition from Cathy Case seeking approval of a Dimensional Variance to place an 11' x 11' gazebo in a front yard at 185 Yale Street. The property is located in an "R-1C Single-Family Residential Zoning District". The request is to construct or place a gazebo in the front-yard facing Clifton Street, 15' from the front property line and less than 10' from the house. Chapter 1286.01 of the Planning and Zoning Code specifically defines a gazebo as an accessory building, and Chapter 1286.05 specifically states accessory buildings shall not be erected in the front-yard of a lot or parcel. According to Ch 1286.05, front-yards are defined as yards located adjacent to all street frontages for parcels having frontage on two or more streets. The gazebo was constructed without the proper permits, however this should have no bearing on whether the variance request should be granted or not. Planning Staff is recommending denial of appeal #Z-5-12 based on the following findings and those listed in the staff report.

- A) Staff finds that practical difficulty does not exist as applied to this specific building project. The Planning and Zoning Code specifically states where accessory structures can be located on corner lots, and in this case, the appellant can comply with the code.
- B) Staff does not believe that the practical difficulty is exceptional and peculiar to the subject parcel and staff believes that the parcel of land could reasonably be built upon in conformance with the requirements of the ordinance by simply relocating or redesigning the gazebo. Therefore, the variance should not be granted and we are recommending denial of this appeal.

Ms. Catherine Case, 185 Yale Street, Battle Creek, MI came forward to speak; provided photos to the board of her property. Stated she had planned to remove the roof of the gazebo and then decided to seek a variance for approval. Ms. Case said she has a passion for planting and gardening and was a single parent with four children; that she has put all her savings into her residence and is now disabled and in a lot of pain and that the gazebo has an easy access for her and she enjoys being there to sit. She thanked the board for their time.

Mr. John Stetler asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION WAS MADE BY MR. JAMES MORENO TO APPROVE THE VARIANCE REQUEST TO ALLOW AN 11 FT. X 11FT. GAZEBO TO BE 15 FT. FROM A FRONT-YARD PROPERTY LINE AS PRESENTD; SUPPORTED BY MR. DELAND DAVIS.

Discussion:

Mr. Greg Dunn stated he would be voting no on this appeal as he is in agreement with the staff report and it is self created, as there are other options available to the applicant. Said they are not here today to vote on the landscaping and that citizens should take advantage of the permit process, which would save the expense of doing projects that are not within the ordinance guidelines.

MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN; ALL IN FAVOR; NONE OPPOSED, MOTION APPROVED.

Ms. Jill Steele, Deputy City Attorney noted to the board that they need to state if their vote was based on the findings in the staff report. The board said “yes” they were all in agreement; their decision was based on the findings in the staff report.

APPROVAL OF MINUTES:

MOTION: WAS MADE BY MR. GREG DUNN TO APPROVE THE AUGUST 14, 2012 ZONING BOARD OF APPEALS MINUTES AS PRESENTED; SUPPORTED BY MR. JAMES MORENO.

ALL IN FAVOR; NONE OPPOSED, MOTION CARRIED – MINUTES APPROVED.

COMMENTS BY THE PUBLIC: None

COMMENTS BY THE MEMBERS / STAFF:

Mr. John Stetler wanted to note that the board still had an open seat and that if any of the board members have a replacement in mind to please inform the Mayor of the possible candidate. Noted there was an application on the city web site for persons to apply for any boards or commissions.

Mr. Deland Davis stated that with not being in attendance at the last meeting; he wanted to thank the staff for the detailed meeting minutes.

Mr. Greg Dunn said that with today being September 11th he wanted to take this opportunity to remember those who have fallen and commend our first responders for the services they provide.

ADJOURNMENT: Mr. James Moreno made a motion for the meeting to be adjourned; Mr. Greg Dunn second, meeting was adjourned at 4:16 P.M.

Submitted by: Leona A. Parrish
Administrative Assistant, Planning Department

Appeal # Z-05-12
For address 185 Yale
St

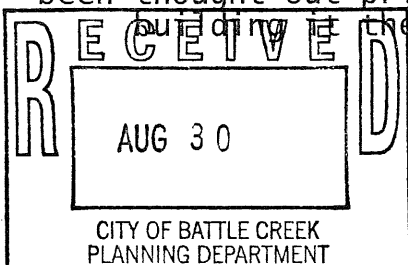
12:03 PM 8/30/2012

CODE COMPLIANCE FOR GAZEBOO
To whom this may concern.

I am writing concerning a letter I received about a code violation being petitioned due to a gazebo being built to close to a home on the corner of Yale and Clifton Place. I am writing to state my opinion as to the facts that if we have codes which all of us in the city have to abide by it should hold for all city residents in Battle Creek. I'm wondering if they got a permit for this why wasn't it disclosed to them that they could not put it there unless there was not a permit purchased. Also the contractor who built it should have known it could not be there that close if they are aware of the codes in Battle Creek. If we let them keep theirs there then we have to drop the code completely for the whole city due to the fact you cannot let one resident do something and then turn around and expect the rest of the city to follow your codes without any type of fines or restrictions. I live on the corner of Clifton and Yale and personally find it disgusting that the city code compliance people don't make people in this area clean up their yards more and some homes around this street have so much junk laying around and their homes falling apart. I have nothing against my neighbors but if I'm going to be charged high taxes and have to pay for permits and follow guidelines then it needs to be for everyone. We cannot give special treatment to one person then expect the rest of the city to follow your codes without everyone in this town coming down and fighting to have exceptions made. Is this what our tax paying dollars are going towards. I have to work so I don't have time to come down there and argue about the codes and regulations in this town but if someone has broken them then they have to be made to pay whatever the city is requiring of them. I'm sorry if she is being asked to move it but if it was put where it wasn't supposed to be or the person who built it for her didn't tell her it couldn't be there and was too close, but it all should have been thought out prior to building it then there would not have been this problem.

Page 1

Jessie Harwath
100 Clifton Place

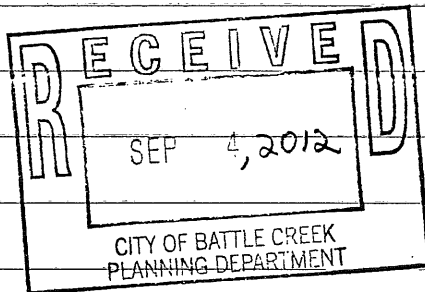


August 23,
2012

Attn: Christine Hilton, AICP

I, Trina Sims, live at 220 Yale St, and are putting my comment in writing. I feel that Mrs. Case should not be allowed to break any zoning laws or codes. The gazebo should ^{be} placed where it is allowed to be placed or it will make the neighbors people think that they also can do this. It really looks out of place where it is located now.

(Trina Sims)
Trina Sims



To Whom it May Concern,

8-23-2012

In response to the notice concerning a gazebo at 185 Yale St.

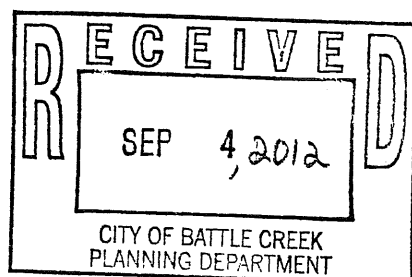
This property is already too cluttered and an eyesore to the neighborhood. And the gazebo is already there. Obviously a permit was never obtained as this would not be an issue now.

The city zoning and codes are in place for reasons. They are at times inconvenient and frustrating but are there for reasons. In a situation that would make a structure a necessity, such as a ramp for someone who is handicapped. But that is not the case.

We would rather not see the zoning changed at this time for this use.

Thank You

Mr & Mrs. Dilling



Sept 3-

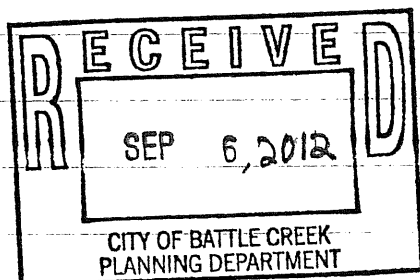
To Whom it May Concern:

RE: zoning Variance, appeal # 2-05-12

This letter is concerning a gazebo that was built at 185 Yucca St by one Catherine Case.

If Miss Case had obtained a building permit (as required by city law) she would have known from the start where and what specifications were in place before placing the gazebo where it is.

It is my opinion that she should take said object down, move it to a proper location, specified by city regulations, and ordinances, also builder should be fined.



Charles Carlisle
218 Yucca St
BC.